

Article 89

North Carolina Professional Employer Organization Act

§ 58-89-1. Title.

This Article shall be known and may be cited as the "North Carolina Professional Employer Organization Act".

§ 58-89-5. Definitions.

In this Article:

(1) "Applicant" means a person applying for a registration under this Article.

(2) "Control", including the terms "controlling", "controlled by", and "under common control with", has the same meaning as in G.S. 58-19-5(2).

(3) "Managed services" means services provided by an organization that is the sole employer of employees whom it supplies to staff and to manage a specific portion of a company's workforce or a specific facility within a company on an ongoing basis. The managed services organization has responsibility for ensuring the capabilities and skills of the employees it supplies or provides, for all employer functions, for supervisory responsibility over the employees, and for management accountability of the facility or function.

(4) "Person" has the same meaning as in G.S. 58-1-5(9).

(5) "Personnel placement services" means a service that offers job placement services in which the personnel placement service organization assists persons interested in finding a job with companies that are seeking employees. Companies that hire persons through a personnel placement service are the sole employers of the persons hired, and the personnel placement service does not have any responsibility as an employer.

(6) "Professional employer organization" means a person that offers professional employer services and includes "staff leasing services companies", "employee leasing companies", "staff leasing companies", and "administrative employers" who offer or propose to offer professional employer services in this State.

(7) "Professional employer organization group" means a combination of professional employer organizations that operates under a group registration issued under this Article.

(8) "Professional employer services" means an arrangement by which employees of a registrant are assigned to work at a client company and in which employment responsibilities are in fact shared by the registrant and the client company, the employee's assignment is intended to be of a long-term or continuing nature, rather than temporary or seasonal in nature, and a majority of the workforce at a client company work site or a majority of the personnel of a specialized group within that workforce consists of assigned employees of the registrant. "Professional employer services" does not include services that provide temporary employees or independent contractors, personnel placement services, managed services, payroll services that do not involve employee staffing or leasing, or similar groups that do not meet the requirements of this subdivision.

(9) "Temporary employees" means persons employed under an arrangement by which an organization hires its own employees and assigns them to a client company to support or supplement the client's workforce in a special work situation, including:

- a. An employee absence;
- b. A temporary skill shortage;
- c. A seasonal workload; or
- d. A special assignment or project.

§ 58-89-10. Rules.

(a) The Commissioner may adopt rules necessary to implement, administer, and enforce the provisions of this Article.

(b) Each registrant is subject to this Article and to the rules adopted by the Commissioner.

(c) Nothing in this Article preempts the existing statutory or rule-making authority of any other State agency or entity to regulate professional employer services in a manner consistent with the statutory authority of that State agency or entity.

§ 58-89-15. Registration required; professional employer organization groups.

(a) No person shall engage in or offer professional employer services in this State unless the person is registered with the Department of Insurance under this Article.

(b) Two or more professional employer organizations that are controlled by the same ultimate parent, entity, or persons may be registered as a professional employer organization group. A professional employer organization group may satisfy the requirements of this Article on a consolidated basis.

(c) An applicant for an initial professional employer organization registration shall file with the Commissioner the information required by subsection (d) of this section on a form prescribed by the Commissioner accompanied by the registration fee. No application is complete until the Commissioner has received all required information.

(d) The registration application shall, at a minimum, be comprised of all of the following information:

(1) The name, organizational structure, and date of organization of the applicant, the addresses of the principal office and all offices in this State, the name of the contact person, and the taxpayer or employer identification number.

(2) A list by jurisdiction of each name under which the applicant has operated in the preceding five years, including any alternative names, names of predecessors, and, if known, successor business entities. The list required by this subdivision shall include the parent company name and any trade name, trademark, or service mark of the applicant.

(3) A list of all officers and controlling persons of the applicant, their biographical information, including their management background, and an affidavit from each attesting to his or her good moral character and management competence.

(4) The location of the business records of the applicant.

(5) Evidence that the applicant has paid all of its obligations for payroll-related taxes, workers' compensation insurance, and employee benefits. All disputed amounts shall be disclosed in the application.

(6) Any other information the Commissioner deems necessary.

(e) An application for registration of a professional employer organization group shall contain the information required by this section for each member of the group.

(f) If the Commissioner finds that the applicant has not fully met the requirements for registration, the Commissioner shall refuse to register the applicant and shall notify the applicant in writing of the denial, stating the grounds for the denial. Within 30 days after service of the notification, the applicant may make a written demand upon the Commissioner for a review to determine the reasonableness of the Commissioner's action. The review shall be completed without undue delay, and the applicant shall be notified promptly in writing as to the outcome of the review. Within 30 days after service of the notification as to the outcome, the applicant may make a written demand upon the Commissioner for a hearing under Article 3A of Chapter 150B of the General Statutes if the applicant disagrees with the outcome.

§ 58-89-20. Fees.

(a) Each applicant for registration shall pay to the Commissioner, before the issuance of the registration, a nonrefundable application fee of two hundred fifty dollars (\$250.00).

(b) Fees collected by the Commissioner under this Article shall be credited to the Department of Insurance Fund created under G.S. 58-6-25.

§ 58-89-25. Prohibited acts.

No person shall do any of the following:

(1) Engage in or offer professional employer services without being registered under this Article as a professional employer organization.

(2) Use the name or title "staff leasing company", "employee leasing company", "registered staff leasing company", "staff leasing services company", "professional employer organization", or "administrative employer" or otherwise represent that the person is registered under this Article unless the person is registered under this Article.

(3) Represent as the person's own the license of another person or represent that a person is registered if the person is not registered.

(4) Give materially false or forged evidence to the Commissioner in connection with obtaining a registration.

§ 58-89-30. Criminal penalty.

A person who violates G.S. 58-89-25 commits a Class H felony. Any officer or controlling person who willfully violates any provision of this Article may be subject to any and all criminal penalties available under State law.